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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,640	08/01/2003	Chen-Fa Huang	030707.SU (15819-121)	2759
23595	7590	05/28/2004	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402				LOPEZ, MICHELLE
		ART UNIT		PAPER NUMBER
		3721		

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/632,640	HUANG, CHEN-FA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michelle Lopez	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 15 April 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1 and 4 is/are pending in the application.  
4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1 is/are rejected.

7)  Claim(s) 4 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 01 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species III, reading on claims 1 and 4, is acknowledged. The traversal is on the ground(s) that claim 1 is generic to Figs. 1-9 and claim 4 is directed to Figs. 8 and 9. This is found persuasive.
2. Claims 2 and 3 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement. Further, applicant argues that there has been no indicated reason for restriction, any indication of different fields of search, or undue burden of examination. These arguments are pertinent to a restriction requirement, which is not the present case. An election of species requirement has been issued. If applicants are suggesting that the embodiments are not patentably distinct, as a reason for traversal, then such should be specifically stated.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 4, it is not clear if the "pull spring" is the same spring disclosed in claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lai (US 5,836,501) in view of Ho (US 6,427,896). Lai'501 discloses a safety trigger mechanism for a stapler having a link assembly via "50", a pivotable member "32" which has a first end "322" connected to a top of a stop member "3" and a second end "321" located beside a second end of the connection link via "50", a spring "4" connected to an underside of the stop member "3" (see Fig. 2) which is adapted to be connected to a trigger "1" of the stapler, the second end "321" of the pivotable member being pushed by the connection link "50", and an activation member "51" pressed by the stop member "3". Even when Lai'501 teaches a link assembly with a connection link at its second end via "50", Lai'501 does not disclose a rod having a first end connected to a first end of a connection link and a second end of the rod adapted to be extended over a nose of the stapler. However, Ho'896 teaches a push rod "50" having a first end "51" connected to a first end of a connection link and a second end "52" of the rod adapted to be extended over a nose of the stapler for the purpose of providing a safety device for a pneumatic stapler by preventing mis-function or mis-operation of the stapler. In view of Ho'896, it would have been obvious to one having ordinary skills in the art to have modified Lai's invention by having a push rod having a first end connected to a first end of a connection link and a second end of the rod adapted to be extended over a nose of the stapler in order to provide a safety device for a pneumatic stapler, thereby preventing mis-function or mis-operation of the stapler.

***Allowable Subject Matter***

5. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Becht'106, Barrington'572, Chen'532, Chen'372, Wang'642, Liu'324, and Chang'989 are cited to show related inventions.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 703-305-8205. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML

  
SCOTT A. SMITH  
PRIMARY EXAMINER